

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JOSEPH LIBBY, Individually, and on behalf of
himself and all others similarly situated,

Civil Action No.:

Plaintiff(s),

-against-

CLASS ACTION COMPLAINT

COMMONWEALTH FINANCIAL SYSTEMS,
INC., and JOHN DOES 1-25

DEMAND FOR JURY TRIAL

Defendant(s).

Plaintiff, JOSEPH LIBBY(hereinafter, "Plaintiff"), a New Jersey resident, brings this class action complaint by and through his attorneys, Marcus Law, LLC, against Defendant COMMONWEALTH FINANCIAL SYSTEMS, INC. (hereinafter "Defendant"), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff's counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff's personal knowledge.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this class action under 28 U.S.C. § 1331, 15 U.S.C. § 1692 *et seq.* and 28 U.S.C. § 2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1367(a).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

NATURE OF THE ACTION

3. Plaintiff brings this class action on behalf of a nationwide class seeking redress for Defendant's actions of using an unfair and unconscionable means to collect a debt.
4. Defendants actions violated § 1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act ("FDCPA").
5. Plaintiff is seeking damages, and declaratory and injunctive relief.

PARTIES

6. Plaintiff is a natural person and a resident of the State of New Jersey, and is a "Consumer" as defined by 15 U.S.C. §1692(a)(3).
7. Defendant is a collection agency that focuses on debt collection with its principal office located at 245 Main Street, Dickson City, PA 18519.
8. Upon information and belief, Defendant is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.
9. Defendant is a "debt collector," as defined under the FDCPA under 15 U.S.C. § 1692a(6).
10. John Does 1-25, are fictitious names of individuals and businesses alleged for the purpose of substituting names of Defendants whose identities will be disclosed in discovery and should be made parties to this action.

CLASS ALLEGATIONS

11. Plaintiff brings claims, pursuant to the Federal Rules of Civil Procedure (hereinafter "FRCP") Rule 23, individually and on behalf of the following consumer class (the "Class"):

- a. All New Jersey consumers who received a collection letter from the Defendant attempting to collect an obligation owed to or allegedly owed to TIDAL EMERGENCY PHYSICIANS, that contain at least one of the alleged violations arising from Defendant's violation of 15 U.S.C. §1692 *et seq.*.
- b. The Class period begins one year to the filing of this Action.

12. The Class satisfies all the requirements of Rule 23 of the FRCP for maintaining a class action:

- Upon information and belief, the Class is so numerous that joinder of all members is impracticable because there are hundreds and/or thousands of persons who have received debt collection letters and/or notices from the Defendant that violate specific provisions of the FDCPA. Plaintiff is complaining of a standard form letter and/or notice that is sent to hundreds of persons (*See Exhibit A and Exhibit B*, except that the undersigned attorney has, in accordance with Fed. R. Civ. P. 5.2 partially redacted the financial account numbers in an effort to protect Plaintiff's privacy);
- There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:
 - a. Whether Defendant violated various provisions of the FDCPA;
 - b. Whether Plaintiff and the Class have been injured by Defendant's conduct;
 - c. Whether Plaintiff and the Class have sustained damages and are entitled to restitution as a result of Defendant's wrongdoing and if

so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and

d. Whether Plaintiff and the Class are entitled to declaratory and/or injunctive relief.

- Plaintiff's claims are typical of the Class, which all arise from the same operative facts and are based on the same legal theories.
- Plaintiff has no interest adverse or antagonistic to the interest of the other members of the Class.
- Plaintiff will fairly and adequately protect the interest of the Class and has retained experienced and competent attorneys to represent the Class.
- A Class Action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.
- A Class Action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a Class Action, class members will continue to suffer losses of statutory protected rights as well as monetary damages. If Defendant's conduct is allowed to proceed without remedy they will continue to reap and retain the proceeds of their ill-gotten gains.

- Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

ALLEGATIONS OF FACT

13. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “12” herein with the same force and effect as if the same were set forth at length herein.
14. Defendant collects and attempts to collect debts incurred or alleged to have been incurred for personal, family or household purposes on behalf of creditors using the United States Postal Services, telephone and Internet.
15. Upon information and belief, within the last year the Defendant began a collection campaign against the Plaintiff in an attempt to collect an alleged “debt” as defined by 15 U.S.C. 1692a(5).
16. On or about January 27, 2015, the Defendant sent the Plaintiff an initial collection letter.
See Exhibit A.
17. The back of Defendant’s letter to the Plaintiff (*See Exhibit B*) stated in part:

“Note that a \$10.00 processing fee may be added to all credit card payments, if allowed by the laws of your state.”
18. Upon information and belief, the Defendant has no legal or contractual right to charge a processing fee.
19. Upon information and belief, Defendant sent a written communication, in the form annexed hereto as **Exhibit A** and **Exhibit B** to at least 50 natural persons in the State of New Jersey within one year of the date of this Complaint.

CLAIMS FOR RELIEF

COUNT I

**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. §1692e *et seq.***

20. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “19” herein with the same force and effect as if the same were set forth at length herein.
21. Defendants’ debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e(2), 1692e(5), and 1692e(10).
22. Pursuant to 15 U.S.C. § 1692e, a debt collector may not use any false, misleading and/or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.
23. The Defendants violated said section by falsely representing the character, amount, or legal status of the debt and falsely representing that a transaction fee may lawfully be received by the Defendant in violation of 15 U.S.C. § 1692e(2)(A) and 1692e(2)(B).
24. The Defendant further violated said section by threatening to charge a fee that cannot legally be charged in violation of 15 U.S.C. § 1692e(5).
25. The Defendant further violated said section by using false representation or deceptive means in an attempt to collect the alleged debt in violation of 15 U.S.C. § 1692e(10).
26. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct violated Section 1692e *et seq.* of the FDCPA, actual damages, statutory damages, costs and attorneys’ fees.

COUNT II

**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. §1692f *et seq.***

27. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “26” herein with the same force and effect as if the same were set forth at length herein.
28. Defendant’s debt collection efforts attempted and/or directed towards the Plaintiff violated 15 U.S.C. § 1692(f)1 of the FDCPA.
29. Pursuant to 15 U.S.C. § 1692(f), a debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: (1) The collection of any amount (including interest, fee, charge or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
30. Defendants violated said section by stating in their November 11, 2014 letter that a fee may be charged for payments made by phone.
31. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct violated Section 1692f *et seq.* of the FDCPA, actual damages, statutory damages, costs and attorneys’ fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- (a) Declaring that this action is properly maintainable as a Class Action and

certifying Plaintiff as Class representative, and Ari Marcus, Esq., as Class Counsel;

- (b) Awarding Plaintiff and the Class statutory damages;
- (c) Awarding Plaintiff and the Class actual damages;
- (d) Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses;
- (e) Awarding pre-judgment interest and post-judgment interest; and
- (f) Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

Dated: May 4, 2015

/s/ Ari H. Marcus

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DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

Dated: May 4, 2015

/s/ Ari H. Marcus

Ari Marcus, Esq.

CERTIFICATION PURSUANT TO LOCAL RULE 11.2

I, Ari H. Marcus, the undersigned attorney of record for Plaintiff, do hereby certify to my own knowledge and based upon information available to me at my office, the matter in controversy is not the subject of any other action now pending in any court or in any arbitration

or administrative proceeding.

Dated: May 4, 2015

/s/ Ari H. Marcus

Ari Marcus, Esq.
MARCUS LAW, LLC